

<b>NEGOTIATED CONTRACT</b>	<b>Contract No. FS-99</b>
<b>The Hycon Mfg. Company</b> <b>Pasadena, California</b>	
<b>Contract for: Contract Work (see Schedule)</b>	<b>Amount:</b> <del>8</del> 161,000. <sup>00</sup>
<b>Mail Invoices to:</b>	<b>Performance Period:</b>
<b>Administrative Data:</b>	
<p>This contract is entered into, by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the above-named Contractor which is a Corporation, incorporated in the State of California, hereinafter called the Contractor.</p> <p>The parties hereto agree that the Contractor shall furnish all the supplies and perform all the services set forth in the attached Schedule issued hereunder, for the consideration stated therein.</p> <p>The rights and obligations of the parties to this contract shall be subject to and governed by the attached Schedule and General Provisions. In the event of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.</p>	
<b>IN WITNESS WHEREOF</b> , the parties hereto have executed this contract as of _____, 1956.	
<b>Signatures:</b>	
<b>The Hycon Mfg. Company</b>  <b>By</b> _____ <b>(Title)</b> 080180100	<b>The United States of America</b>  <b>By</b> _____ <b>Contracting Officer</b>

**SECRET**

C700000

**FS-99**

**CERTIFICATE**

I, \_\_\_\_\_, certify that I am  
the \_\_\_\_\_ of the Corporation named as  
Contractor herein; that \_\_\_\_\_  
who signed this contract on behalf of the Contractor was then the  
\_\_\_\_\_ of said Corporation; that said  
contract was duly signed for and in behalf of said Corporation by  
authority of its governing body, and is within the scope of its  
Corporate powers.

\_\_\_\_\_  
Signature (Corporate Seal)

FB-99

(11)

000180500

**INDEX OF SCHEDULE**

<b>PART I</b>	<b>SUPPLIES AND SERVICES TO BE FURNISHED</b>	<b>iv</b>
<b>PART II</b>	<b>CONSIDERATION AND PAYMENT</b>	<b>v</b>
<b>PART III</b>	<b>PERIOD OF PERFORMANCE</b>	<b>v</b>
<b>PART IV</b>	<b>OPTION TO EXTEND AND/OR EXPAND SERVICES</b>	<b>vi</b>
<b>PART V</b>	<b>PRICE REDETERMINATION</b>	<b>vi</b>
<b>PART VI</b>	<b>REPORTS AND FINAL ACCEPTANCE</b>	<b>vii</b>
<b>PART VII</b>	<b>WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS</b>	<b>viii</b>
<b>PART VIII</b>	<b>SPECIAL SECURITY RESTRICTIONS</b>	<b>viii</b>
<b>PART IX</b>	<b>LETTER CONTRACT SUPERSEDED</b>	<b>viii</b>
<b>PART X</b>	<b>INTERIM PAYMENTS</b>	<b>ix</b>

1106000

080180100

## **SCHEDULE**

### **PART I - SUPPLIES AND SERVICES TO BE FURNISHED**

**A. The Contractor shall, in accordance with the instructions of the Contracting Officer, recruit and train (and make available to the Government for use in overseas operations pursuant to a separate contract) (i) five (5) teams of five (5) men each to serve on field service teams to service and maintain certain basic equipment, and (ii) a supervising field engineer and a senior field engineer. The Government shall provide the basic equipment on which training of said teams shall be conducted and shall designate place or places for such training.**

**B. The basic promises or assumptions in connection with the supplies and services to be furnished hereunder, the composition of the team, the contemplated training procedure, and other basic information in connection with the supplies and services to be furnished hereunder are set forth in the basic document entitled "SUPPORT SERVICES PROPOSAL," as revised 17 September 1955, and submitted by the Contractor to representatives of the Government. Copies of such proposal are in the possession of the Government and of the Contractor and such document, to the extent it describes the services to be performed hereunder, is incorporated herein as though fully set forth in this contract; provided, however, that any subsequent changes in basic promises, assumptions or procedures negotiated with the Contractor by the Government (as recorded in correspondence between the Contractor and the Government) shall be considered as amending the basic document referred to above and such additional agreements are incorporated herein as though fully set forth in this contract.**

**C. It is understood that said proposal of 17 September 1955 includes within its scope additional work proposed to be performed for the Government by the Contractor, over and above the work included in the scope of this contract. Such additional work is to be the subject of subsequent negotiations with the Contractor and the subject of separate contractual agreements.**

**D. Upon completion of the scheduled training for any team and until such team departs to render service pursuant to directions of the Contracting Officer under another contract between the Contractor and the Government, the Contractor may in its discretion continue training such team, hold such team in stand-by status, or utilize such team in manufacturing operations.**

**E. Notwithstanding the description above of the supplies and services to be furnished under this contract, the Government may, at its discretion, revise such services, delete services, or require additional collateral or related supplies and services during the period of**

this contract. In such event the Contracting Officer will issue a Change Order directing the required changes, in accordance with the clause of this contract entitled "CHANGES."

## **PART II - CONSIDERATION AND PAYMENT**

A. In accordance with the payment provisions of this contract, and subject to redetermination of the price in accordance with the part of this schedule entitled "PRICE REDETERMINATION", the Government shall pay the Contractor upon satisfactory performance of this contract, as full payment for the services to be supplied by the Contractor hereunder, the amount of one hundred and sixty-one thousand dollars (\$161,000). The breakdown of estimated costs of performance is set forth in Appendix K, hereto.

B. The contract price stated above is subject to increase or decrease in accordance with the part of this Schedule entitled "PRICE REDETERMINATION." In addition the Government may increase this contract price from time to time solely at its discretion, such increased price also to be subject to the redetermination provisions of the part of this Schedule entitled "PRICE REDETERMINATION." If at any time the Contractor has reason to believe that by reason of the performance by it of this contract the amount due it will exceed the contract price set forth in this contract, it shall notify the Contracting Officer to that effect.

C. Interim payments hereunder shall be made in accordance with Part X of this Schedule.

## **PART III - PERIOD OF PERFORMANCE**

A. The period of performance of the services to be provided by the Contractor hereunder shall commence on 18 June 1955, and shall be completed on 1 December 1956.

(v)

FS-99

0801 31 00

8106000

#### **PART IV - OPTION TO EXTEND AND/OR EXPAND SERVICES**

A. The Government is granted the right and option of renewing and extending and/or expanding this contract as to any or all items or services under this contract which are needed by the Government to satisfy long-range requirements of which the work hereunder is a preliminary phase. Such right and option shall extend for any additional periods of time but not as to items or services to be supplied after June 30, 1958. This option to extend and/or expand the contract may be exercised by a Change Order to this contract.

#### **PART V - PRICE REDETERMINATION**

A. Because of the nature of the services called for by this contract and the uncertainty as to the cost of performance hereunder, the parties to this contract agree that the contract price, or prices, stated in Part II hereof may be increased or decreased in accordance with the provisions of this clause.

B. Upon completion of training of the third team or upon expenditure of seventy-five per cent (75 %) of the contract price stated in Part II, whichever shall occur first, the parties shall negotiate to determine whether the contract price shall be revised and a new contract price established, such new contract price to be fixed and to represent the total amount payable to the Contractor for satisfactory performance of the contract, including all services theretofore furnished or thereafter to be furnished.

C. As soon as practicable, and in no case later than sixty (60) days after the furnishing of the services or after expenditure of the funds referred to above, the Contractor shall furnish to the Contracting Officer a statement in such form and detail as the Contracting Officer may prescribe of the cost of furnishing the services called for under this contract together with such information as may be pertinent in the negotiations for a revised price pursuant to this clause. Such statement of cost shall fairly reflect the normal operations of the Contractor's cost system, taking into account any deviations from such normal cost system as are required by the security restrictions placed upon the Contractor by the Government in performance under this contract. The Contracting Officer shall have the right at all reasonable times to make or cause to be made such examinations or audits of the Contractor's books, records and accounts as he may request.

080186100

**D. Upon the filing of the statement and other pertinent information required by paragraph C of this clause, the Contractor and the Contracting Officer will promptly negotiate in good faith to agree upon a reasonable revised price for the entire contract which, upon the basis of such statement and other pertinent information, will constitute fair and just compensation to the Contractor for the performance of this contract. In determining the extent of any estimated allowance for profit to be taken into account in fixing such revised price, consideration will be given to the extent to which the Contractor has performed the contract with efficiency, economy and ingenuity. The revised price shall be evidenced by an amendment to this contract. However, in the event that the negotiations for price revision in accordance with this clause indicate that the uncertainty as to the cost of complete performance is still so great as to prevent a realistic determination of the final price for the over-all completion of this contract, provision may be made for such future negotiations as to revision as may be appropriate to the circumstances at the time.**

**E. If within thirty (30) days after the filing of the statement and other pertinent information required by paragraph C of this clause the parties shall fail to agree upon a revised price in accordance with the provisions of this clause, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause hereof entitled "DISPUTES."**

**F. For any of the purposes of the clause of this contract providing for termination at the option or convenience of the Government (including without limitation, computation of "the total contract price" and "the contract price of work not terminated"), the contract price shall be the revised contract price agreed upon under paragraph D of this clause or determined under paragraph E of this clause, as the case may be.**

#### **PART VI - REPORTS AND FINAL ACCEPTANCE**

**A. Upon completion of the performance of this contract, the Contractor shall submit to the Contracting Officer a report on the services performed under the contract. Such report shall be in such detail as the Contracting Officer may require. Upon acceptance of such report on the behalf of the Government by the Contracting Officer, and upon agreement as to the final price under this contract, the Government shall make final payment and the services supplied hereunder shall be deemed to be finally accepted. Such final acceptance shall be conclusive except with respect to fraud or such gross mistakes as amount to fraud.**

080180100

2300000

(vii)

FS-99

## **PART VII - WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS**

A. Notwithstanding the requirements of any of the General Provisions of this contract to the contrary, whenever the Contractor, in performance of the work under this contract, shall find that the requirements of any of the clauses of the General Provisions are in conflict with security instructions issued to the Contractor by the Contracting Officer or by his duly authorized representative for security matters, the Contractor shall call the attention of the Contracting Officer to such conflict and the Contracting Officer or his duly authorized representative for security matters shall (i) modify or rescind such security requirements or (ii) the Contracting Officer shall issue to the Contractor a waiver of compliance with the requirements of the General Provisions conflicting with such security requirements. Any waiver of compliance with the General Provisions of this contract issued by the Contracting Officer shall be in writing, except that the approval by the Contracting Officer of any subcontract issued hereunder by the Contractor shall be deemed to constitute approval of waiver of any clauses of the General Provisions in conflict with the stipulations of such subcontract.

## **PART VIII - SPECIAL SECURITY RESTRICTIONS**

A. The Contractor shall not reveal (i) the specific nature or any details of the work being performed hereunder or (ii) any information whatsoever with respect to the department of the Government sponsoring this contract and the work thereunder except as the Contractor is directed or permitted to reveal such information by the Contracting Officer or by his duly authorized representative for security matters, and notwithstanding any clause or part of this contract to the contrary, the Contractor shall not interpret any clause or part of this contract as requiring or permitting divulgence of such information to any person, public or private, or to any officer or department of the Government without the express consent of the Contracting Officer or his duly authorized representative for security matters.

## **PART IX - LETTER CONTRACT SUPERSEDED**

A. This is the Definitive Contract contemplated by the Letter Contract issued by the Government to the Contractor under date of 10 June 1955, and supersedes said Letter Contract. Work performed and payments



made under said Letter Contract shall be deemed to be work performed and payments made under this Definitive Contract. The date of the Letter Contract shall govern for the determination of the priority status of this Definitive Contract. In the event of conflict between this Definitive Contract and said Letter Contract, this Definitive Contract shall prevail.

#### **PART I - INTERIM PAYMENTS**

A. The Contractor may present sales billings on a monthly basis for each man month or pro-rata portion thereof for each man engaged in either In-Plant Training or On-Site Training, in accordance with the rates indicated in Appendix No. 1, Part A. The Contractor may also present billings of \$1500 per man for a total not to exceed 25 men, as indicated in Appendix No. 1, Part B, upon certification by the Contractor that students have fulfilled the requirements and are available to the Government for Phase 3 assignment.

B. Each payment made on such sales billings shall be to the extent of 90 percent of the amount of each such invoice presented with 10 percent of the amount of each such invoice to be withheld by the Government as a reserve pending redetermination of the Contract price.

C. The Contractor may at anytime invoice the Government on a progress payment basis, for the work represented by either Part A or Part B of Appendix No. 1, in accordance with Clause "4. PAYMENTS" of the GENERAL PROVISIONS of this Contract.

080180100

(4X)

8579900

**ESTIMATED COST OF PERFORMANCE**  
 Approved For Release 2010/11/29 : CIA-RDP57-00011A001000010066-3

**Contract No. FS-99**  
**Appendix No. 1**

**A. Field Service Personnel**

<u>Classification</u>	<u>Monthly Base Salary</u>	<u>Per Diem \$9.00 per day</u>	<u>Burden at 40%</u>	<u>Total</u>	<u>G&amp;A at 8%</u>	<u>Man Mo. Cost</u>	<u>Man* Mo. Sale</u>	<u>Period (Mos.)</u>	<u>Total Man Mon</u>	<u>Total Man Mo.</u>	<u>Estimated Total Cost</u>
<b><u>In-Plant Training</u></b>											
Supervisor & Moving Field Engineer	\$ 750		300.00	1050.00	84.00	1134.00	1236.06	2	6	12	14,832.72
Senior Field Engineer	675		270.00	945.00	75.60	1020.60	1112.45	2	6	12	13,349.4
Field Engr. Film Processor	600		240.00	840.00	67.20	907.20	988.84	2	6	12	11,866.08
**Field Engr., Camera	550		220.00	770.00	61.60	831.60	906.45	2	12	24	<u>21,754.80</u> 61,863.00
<b><u>On-Site Training</u></b>											
Supervisor & Moving Field Engineer	750	270.00	300.00	1320.00	105.60	1425.60	1553.90	1-3/4	6	10.5	16,315.95
Senior Field Engineer	675	270.00	270.00	1215.00	97.20	1312.20	1430.30	1-3/4	5	8.75	12,515.13
Field Engr. Film Processor	600	270.00	240.00	1110.00	88.80	1198.80	1306.69	1-3/4	5	8.75	11,433.54
Field Engr., Camera	550	270.00	220.00	1040.00	83.20	1123.20	1224.29	1-3/4	16	17.5	<u>21,425.08</u> 61,689.70
* Profit tentatively included at 9%, subject to redetermination provisions										<b>Sub-Total</b>	<b>\$ <u>123,492.70</u></b>

\*\*Designation interchangeable with (1) Engineer, Field and (2) Junior Engineer, Field while students are in the In-Plant Training phase

**Sub-Total Carryover**

**\$ 123,492.70**

**B. Training Program**

Training as outlined will be accomplished on a scheduled requirement for 25 accepted students on a basis of an estimated cost, including profit, tentatively set forth at 9% and subject to redetermination provisions, of \$1500 per student. Such estimated training costs involve direct costs of instructors salaries, training aids, collateral services, start-up costs, etc., plus applicable indirect costs. It is estimated that a total of 30 students will have to be processed, taking into account expected attrition in training and actual operations, in order to assure continuous availability of five qualified teams of five men each.

**25 accepted students, estimated @ \$1500 each**

**Price - Estimated Grand Total**

**37,500.00  
160,992.70**

**Estimated Contract Price subject to  
provisions of Part II of the Schedule**

**\$ 161,000.00**

**INDEX OF GENERAL PROVISIONS**

<u>Clause</u>	<u>Page No.</u>
1. DEFINITIONS	1
2. CHANGES	1
3. INSPECTION	2
4. PAYMENTS	2
5. ASSIGNMENT OF CLAIMS	2
6. FEDERAL, STATE AND LOCAL TAXES	3
7. DEFAULT	5
8. DISPUTES	7
9. CONFLICT LABOR	8
10. EIGHT-HOUR LAW OF 1912	8
11. NONDISCRIMINATION IN EMPLOYMENT	9
12. OFFICIALS NOT TO BENEFIT	9
13. COVENANT AGAINST CONTINGENT FEES	9
14. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT	10
15. SUBCONTRACTS FOR WORK OR SERVICES	14
16. INSPECTION AND AUDIT	15
17. EXAMINATION OF RECORDS	16
18. GRATUITIES	16
19. SERVICES	17
20. CONTRACTOR PERSONNEL	17
21. SERVICES FURNISHED BY GOVERNMENT	17
22. MILITARY SECURITY REQUIREMENTS	18
23. GOVERNMENT-FURNISHED PROPERTY	19
24. COPYRIGHTS	24
25. FILING OF PATENT APPLICATIONS	25
26. PATENT RIGHTS	26
27. AUTHORIZATION AND CONSENT	30
28. PATENT INDEMNITY	30
29. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT	31
30. FLIGHT RISK	31
31. ALTERATIONS IN CONTRACT	33

080180100

0100000

## **GENERAL PROVISIONS**

### **1. DEFINITIONS**

**As used throughout this contract, the following terms shall have the meanings set forth below:**

**A. The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department and the head or any assistant head of the executive agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.**

**B. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.**

**C. Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.**

### **2. CHANGES**

**The Contracting Officer may, at any time, by a written order, and without notice to the sureties, if any, make changes in or additions to drawings and specifications, issue additional instructions, require modified or additional work or services within the general scope of the contract, change the place of delivery or method of shipment, or the amount of Government furnished property. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made in the contract price, or time of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: PROVIDED, HOWEVER, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final**

**FS-99**

080180100

100000

payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "DISPUTES." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

### **3. INSPECTION**

All services, material and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, the Contractor shall allow at all reasonable times such inspectors and other Government personnel as are certified for this purpose by the Contracting Officer free access to the plant and operations and shall furnish such facilities, supplies and services as may be required for this work.

### **4. PAYMENTS**

A. The Contractor shall be paid progress payments in monthly installments upon submission of properly certified invoices therefor to the Contracting Officer, who, after determining that the costs covered by such invoices are chargeable to this contract, shall certify the invoices and cause payment to be made to the Contractor. Each progress payment shall be made to the extent of 90 percent of the amount of each invoice presented. The aggregate amount of the progress payments shall not exceed 90 percent of the contract price set forth in the Schedule.

B. The Contractor shall furnish to and file with the Contracting Officer such copies of the employment contracts, if any, entered into with all trainees engaged in performing the services to be rendered under this contract as may be required by the Contracting Officer.

### **5. ASSIGNMENT OF CLAIMS**

A. Pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (51 U. S. Code 203, 41 U. S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter

be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any other provision of this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act as amended, be subject to reduction or set-off.

B. In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same; PROVIDED, That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

C. The Contractor shall obtain the written authorization of the Contracting Officer prior to the assignment of any rights under this contract.

## 6. FEDERAL, STATE AND LOCAL TAXES

A. Definitions: As used throughout this clause, the following terms shall have the meanings set forth below:

(1) The term "direct tax" means any tax or duty directly applicable to the completed supplies or services (as distinguished from taxes directly applicable to materials and components used in the manufacture or furnishing of the completed supplies or services) covered by this contract, or any other tax or duty from which the Contractor or this transaction is exempt. It includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipts from sales, or use of the supplies or services covered by this contract. The term does not include transportation taxes, unemployment compensation taxes, social

080180100  
- 3 -

8250000

FS-99

security taxes, income taxes, excess-profits taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term "direct tax" as set forth above in this paragraph.

(ii) The term "contract date" means the effective date of this contract if it is a negotiated contract, or the date set for the opening of bids if it is a contract entered into as a result of formal advertising. For the purpose of any additional procurement of supplies or services called for by an agreement supplemental hereto, the term "contract date" shall refer to the date of such supplemental agreement.

**B. Federal Taxes:** Except as may be otherwise provided in this contract, the contract price includes all applicable Federal taxes in effect on the contract date.

**C. State or Local Taxes:** Except as may be otherwise provided in this contract, the contract price does not include any State or local direct tax in effect on the contract date. The Contractor shall follow the directions of the Contracting Officer with respect to reporting the work being performed under this contract for purposes of allocation of State or local taxes and shall not report the work being performed hereunder for such purposes when the Government shall interpose objection to such reporting on security grounds.

**D. Evidence of Exemption:** The Government agrees, upon request of the Contractor, unless there exists no legal basis to sustain an exemption, to furnish a Tax Exemption Certificate or other similar evidence of exemption with respect to any direct tax not included in the contract price pursuant to this clause; and the Contractor agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (i) promptly to notify the Contracting Officer of such refusal, (ii) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (iii) if so directed by the Contracting Officer, to take all necessary action, in cooperation with and for the benefit of the Government, to secure a refund of such tax (in which event the Government agrees to reimburse the Contractor for any and all reasonable expenses incurred at its direction).

**E. Price Adjustment:** If, after the contract date, (i) the Federal Government or any State or local government either imposes or increases (or removes an exemption with respect to) any direct tax or any tax directly applicable to the materials or components used in the manufacture



or furnishing of the completed supplies or services covered by this contract, or (ii) the Federal Government or any State or local government refuses to accept the evidence of exemption, furnished under paragraph D hereof, with respect to any direct tax excluded from the contract price, or (iii) the Federal Government does not furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax excluded from the contract price, and if under either (i), (ii), or (iii) the Contractor is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the contract price shall be correspondingly increased, and if interest and penalties are incurred by reason of delay in payment of such tax on the instruction of the Contracting Officer, and such interest and penalties are legally imposed, the contract price shall be correspondingly increased. If, after the contract date, the Contractor is relieved in whole or in part from the payment or the burden of any direct tax included in the contract price, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this contract, the Contractor agrees promptly to notify the Contracting Officer of such relief, and the contract price shall be correspondingly decreased or the amount of such relief paid over to the Government. Invoices or vouchers covering any increase or decrease in contract price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.

**F. Refund or Drawback:** If any tax or duty has been included in the contract price or the price as adjusted under paragraph E of this clause, and if the Contractor is entitled to a refund or drawback by reason of the export or re-export of supplies covered by this contract, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this contract, the Contractor agrees that he will promptly notify the Contracting Officer thereof and that the amount of any such refund or drawback obtained will be paid over to the Government or credited against amounts due from the Government under this contract; **PROVIDED, HOWEVER,** That the Contractor shall not be required to apply for such refund or drawback unless so requested by the Contracting Officer.

## **7. DEFAULT**

**A.** The Government may, subject to the provisions of paragraph B below, by written Notice of Default to the Contractor, terminate

0801803101

FS-99

2000000

the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

B. The Contractor shall not be liable for any excess costs, if any failure to perform the contract arises out of causes beyond the control and without the fault of negligence of the Contractor. Such causes include, but are not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and defaults of subcontractors due to any of such causes unless the Contracting Officer shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

C. In the event the Government terminates this contract in whole or in part as provided in paragraph A of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services, PROVIDED That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

D. If this contract is terminated as provided in paragraph A of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials")

080180101

**SECRET**

as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price for completed supplies delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "DISPUTES."

E. If, after notice of termination of this contract under the provisions of paragraph A of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph B of this clause, such Notice of Default shall be deemed to have been issued pursuant to the clause of this contract entitled "TERMINATION FOR CONVENIENCE OF THE GOVERNMENT," and the rights and obligations of the parties hereto shall in such event be governed by such clause. Except as otherwise provided in this contract, this paragraph E applies only if this contract is with a military department.

F. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## **8. DISPUTES**

A. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence, be final and conclusive; PROVIDED That, if no such appeal is

- 080180171

5000000

FS-99

SECRET

taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

## **9. CONVICT LABOR**

A. In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

## **10. EIGHT-HOUR LAW OF 1912**

A. This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (48 U. S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912 as amended, and to all other provisions and exceptions of said Law:

B. No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every such laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed upon the Contractor for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

- 080180100 - 8 -

FS-99

5000000

**11. NONDISCRIMINATION IN EMPLOYMENT**

A. In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

B. The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

**12. OFFICIALS NOT TO BENEFIT**

A. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**13. COVENANT AGAINST CONTINGENT FEES**

A. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

- 0801842-00

FS-99

#### **14. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT**

**A. The performance of work under this contract may be terminated by the Government in accordance with this clause, in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.**

**B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require which approval or ratification shall be final for all the purposes of this clause; (6) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government; (7) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph; PROVIDED, HOWEVER, That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and PROVIDED FURTHER, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this**

- 680180000 -

09.0000

FS-99



contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same, PROVIDED, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within each two-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such two-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of paragraph C, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done. The contract

08018010011-

FS-99

shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph E of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph D.

E. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph D upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph B (7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) The total of: (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph E (1) hereof; (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph B (5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); (iii) a sum equal to 2% of that part of the amount determined under (i) which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8% of the remainder of such amount, but the aggregate of such sums shall not exceed 6% of the whole of the amount determined under subdivision (i) above, which amount for the purpose of this subdivision (iii) shall exclude any charges for interest on borrowings.



(3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract. The total sum to be paid to the Contractor under (1) and (2) of this paragraph E shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph E (1) and paragraph E (2) (i), the fair value, as determined by the Contracting Officer, in connection with property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph B (7).

F. Any determination of costs under paragraph C or E hereof shall be governed by the Statement of Principles for Consideration of Costs set forth in Part 4 of Section VIII of the Armed Services Procurement Regulation, as in effect on the date of this contract.

G. The Contractor shall have the right of appeal, under the clause of this contract entitled "DISPUTES," from any determination made by the Contracting Officer under paragraphs C or E above, except that if the Contractor has failed to submit its claim within the time provided in paragraph C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph C or E above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

H. In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments on account theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor.

- 080130100 - 13 -

8716000

FS-99

or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

I. If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

J. The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; PROVIDED, HOWEVER, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

K. Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses, of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs or other authentic reproductions thereof.

## **15. SUBCONTRACTS FOR WORK OR SERVICES**

A. No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed

= 08018

- 14 -

1010000

FE-99

articles, spare parts or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

B. The Contractor shall give specific advance notification to the Contracting Officer of any proposed subcontract hereunder which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract.

C. The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract, or (3) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (4) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph C.

D. The Contractor agrees that no subcontract places under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

E. The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the acceptability of the subcontract price, unless such approval specifically provides that it constitutes a determination of the acceptability of the subcontract price.

F. The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph C above.

## 16. INSPECTION AND AUDIT

A. The Contractor agrees that its books and records and its plants, or such part thereof as may be engaged in the performance of this

080120100

- 15 -

2010000

FS-99

contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Contracting Officer.

B. The Contractor shall cause a like provision to be included in all subcontracts hereunder.

## **17. EXAMINATION OF RECORDS**

A. The Contractor agrees that the Contracting Officer or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract, including subcontracts hereunder.

B. The provisions of paragraph A above are in addition to any other provisions of this contract relating to access to, retention of or inspection of records.

## **18. GRATUITIES**

A. The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; PROVIDED, That the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

B. In the event this contract is terminated as provided in paragraph A hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in

SECRET

an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

C. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## **19. SERVICES**

A. The Contractor shall be responsible for the selection of its trainees, for supervising techniques used in their work, and for keeping them informed of all improvements, changes, and methods of operations. The trainees shall be well qualified to perform the services required as directed by the Contracting Officer. The services shall be performed during the period specified in Part III of the Schedule, but the time of starting and ending performance and the number of trainees furnished at any time shall be as directed by the Contracting Officer.

## **20. CONTRACTOR PERSONNEL**

A. The Contractor shall provide all salaries and wages of the trainees and any and all other support necessary in connection with the services to be rendered hereunder except as otherwise provided in the clause of this contract entitled "SERVICES FURNISHED BY GOVERNMENT."

## **21. SERVICES FURNISHED BY GOVERNMENT**

In connection with services to be rendered hereunder, the Government shall furnish and supply to the Contractor the following facilities and services:

A. Suitable lodging and meals for the trainees and instructors during such periods as they are assigned to the base known as Paradise Ranch.

B. The use of Government-furnished equipment and ground-handling equipment normally used for servicing the equipment involved.

000100100

5010000

**C. Such other services and facilities as are required from time to time and as are available, as approved by the Contracting Officer.**

## **22. MILITARY SECURITY REQUIREMENTS**

**A. The provisions of this clause shall apply to the extent that this contract involves access to security information classified "Top Secret," "Secret," or "Confidential."**

**B. The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification.**

**C. To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph B above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of (i) the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information as in effect on date of this contract, which Manual is hereby incorporated by reference and made a part of this contract, (ii) any amendments to said Manual required by the demands of national security as determined by the Government and made after the date of this contract, notice of which has been furnished to the Contractor by the Contracting Officer, and (iii) those provisions of written agreements entered into by the parties pertaining to the adaptation of the Manual to the Contractor's business.**

**D. Designated representatives of the Government responsible for inspection pertaining to industrial security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of this clause. Should the Government, through its authorized representative, determine that the Contractor has not complied with such requirements, the Government shall inform the Contractor in writing of the proper actions to be taken in order to effect compliance with such requirements.**



**E. If, subsequent to the date of this contract, the security classifications or requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the clause in this contract entitled "CHANGES."**

**F. The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified security information, provisions which shall conform substantially to the language of this clause, including this paragraph F but excluding the last sentence of paragraph E of this clause.**

**G. The Contractor also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified security information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified security information.**

## **23. GOVERNMENT-FURNISHED PROPERTY**

**A. The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property which the Schedule or the specifications state the Government will furnish (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property of a type suitable for use will be delivered to the Contractor at the times stated in the Schedule or if not so stated in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, if requested by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall grant to the Contractor a reasonable extension of time in respect of such delivery or performance dates. The Government shall not be liable to the Contractor for damages or loss of profit by reason of any delay in delivery of or failure to deliver any or all of the Government-furnished property, except that in case of such delay or**

failure, upon the written request of the Contractor, an equitable adjustment shall be made in the delivery or performance dates, or price, or both, and in any other contractual provision affected thereby, in accordance with the procedures provided for in the clause of this contract entitled "CHANGES."

B. By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, upon the written request of the Contractor, an equitable adjustment shall be made in the delivery or performance dates, or price, or both, and in any other contractual provisions affected by such decrease, in accordance with the procedures provided for in the clause of this contract entitled "CHANGES."

C. Title to the Government-furnished property shall remain in the Government. Title to Government-furnished property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affiliation to any realty. The Contractor shall maintain adequate property control records of Government-furnished property in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" dated March 1951.

D. The Government-furnished property shall, unless otherwise provided herein, be used only for the performance of this contract.

E. The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished property, until disposed of by the Contractor in accordance with this clause. In the event that damaged or defective Government-furnished property is delivered to the Contractor, or any other damage occurs to Government-furnished property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; PROVIDED, HOWEVER, That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable



adjustment will be made in the contract price for any such repair or replacement of Government-furnished property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

**F. (1) Except for loss, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished property, as required by paragraph E hereof, and except as specifically provided in this contract, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished property (A) caused by any peril while the property is in transit off the Contractor's premises, or (B) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:**

- (I) Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, including vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of such government, power, authority or forces; or**
- (II) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the**

180180100

**normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.**

**The perils as set forth in (A) and (B) above are hereinafter called "excepted perils."**

**The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (I) all or substantially all of the Contractor's business; (II) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; and (III) a separate and complete major industrial operation in connection with the performance of this contract.**

**(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-furnished property caused by any excepted peril.**

**(iii) Upon the happening of loss or destruction of or damage to any Government-furnished property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished property from further damage, separate the damaged and undamaged Government-furnished property, put all the Government-furnished property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government-furnished property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government-furnished property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under**

this subparagraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a supplemental agreement.

(iv) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-furnished property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished property in accordance with the provisions of this contract, the Government-furnished property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph E above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(vii) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government-furnished property occurring in connection

with operations of said aircraft will be governed by the clause of this contract captioned "FLIGHT RISKS," to the extent such clause is, by its terms, applicable.

G. The Government shall at all reasonable times have access to the premises wherein any Government-furnished property is located.

H. Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished property, as may be directed or authorized by the Contracting Officer. Recoverable scrap from Government-furnished property shall be reported in accordance with a procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

I. Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

J. Where the words "managers, superintendents or other equivalent representatives" are used or referred to, they shall be construed for the purpose of this clause as meaning "manufacturing managers, plant managers, production managers, works managers, division superintendents, or other equivalent representatives."

K. The provisions of this clause shall apply to all supplies accepted and delivered but left in the possession of the Contractor for modification, testing, or any other reason or purpose in connection with this contract.

## 24. COPYRIGHTS

A. The Contractor agrees to and does hereby grant to the Government, and to its officers, agents and employees acting within the scope of their official duties, (1) royalty-free, nonexclusive and irrevocable license to reproduce, translate, publish, use, and dispose of, and to authorize

others so to do, all copyrightable material first produced or composed and delivered to the Government under this contract by the Contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and (ii) a license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the Contractor in the performance of this contract but which is incorporated in the material furnished under the contract, provided that such license shall be only to the extent the Contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

B. The Contractor agrees that it will exert all reasonable effort to advise the Contracting Officer, at the time of delivering any copyrightable or copyrighted work furnished under this contract, of any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

C. The Contractor agrees to report to the Contracting Officer, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the Contractor with respect to any material delivered under this contract.

## **25. FILING OF PATENT APPLICATIONS**

A. While and so long as the subject matter of this contract is classified "Secret" or higher, the Contractor agrees that, before filing or causing to be filed a patent application disclosing any of said subject matter, it will refer the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be kept secret or the issuance of a patent thereunder otherwise delayed, under pertinent statutes or regulations; and the Contractor agrees to observe any instructions given by the Contracting Officer in this regard, with instructions may include a direction not to file such application so long as the Contracting Officer considers that such filing would jeopardize national security. If the Contracting Officer directs the Contractor not to file such application, the Contractor may submit to the Contracting Officer a written request, addressed to the Secretary, for reconsideration of such direction, but pending action by the Secretary, the Contractor shall observe such instruction.

B. While and so long as the subject matter of this contract is classified "Confidential," the Contractor agrees to furnish to the Contracting Officer, at the time of or prior to filing or causing to be filed a patent application disclosing any of said subject matter, a copy of such application for determination whether, for reasons of national security, such application should be kept secret or the issuance of a patent thereunder otherwise delayed, under pertinent statutes or regulations; and the Contractor agrees to observe any instructions of the Contracting Officer in this regard.

## **26. PATENT RIGHTS**

A. As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention, improvement or discovery (whether or not patentable) conceived or first actually reduced to practice either (A) in the performance of the experimental, developmental or research work called for under this contract, or (B) in the performance of any experimental, developmental or research work relating to the subject matter of this contract which was done upon the understanding that a contract would be awarded.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in paragraphs F, G and H of this clause), provided that such person, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

B. The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable and royalty-free license to practice, and cause to be practiced for the Government throughout



the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method; PROVIDED, HOWEVER, That with respect to (i) any Subject Invention made by other than Technical Personnel, (ii) any Subject Invention conceived prior to any performance of this contract as set forth in paragraph A above but first actually reduced to practice in the course of any such performance, and (iii) the practice of any Subject Invention in foreign countries, the said license and other rights hereinafter provided shall be to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this paragraph shall be deemed to grant any license under any invention other than a Subject Invention. Any license granted herein shall not convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields.

C. The Contractor agrees as follows: (i) to make written disclosure promptly to the Contracting Officer of each Subject Invention which reasonably appears to be patentable and to exert all reasonable effort to make such disclosure not later than six months after first publication, public use or sale; (ii) to specify, at the time of such disclosure, whether or not said Subject Invention has been or will be claimed in a United States patent application and unless it thereafter notified the Government to the contrary not later than eight months after first publication, public use or sale, to file or cause to be filed in due form and time a United States patent application covering each Subject Invention so specified; (iii) to the extent of the Contractor's right to do so, to deliver to the Contracting Officer such duly executed instruments (prepared by the Government) of assignment, application papers and rightful oaths as are necessary to vest in the Government the sole and exclusive ownership of, and the right to apply for and prosecute patent applications covering, each Subject Invention which the Contractor does not specify as aforesaid (or having so specified, thereafter notifies the Government to the contrary), subject, however, to the reservation of a nonexclusive and royalty-free license thereunder to the Contractor (and to its associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part), which license shall be assignable to the successor of that part of the Contractor's business to which it pertains; (iv) to furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application as filed by or on behalf of the Contractor covering any Subject Invention; (v) in the event the Contractor elects not to continue prosecution of any such United States patent application filed by the Contractor,

080180100

- 27 -

5110000

FS-99

to so notify the Contracting Officer not less than sixty days before the expiration of the response period, and upon written request, to deliver to the Contracting Officer, to the extent of the Contractor's right to do so, a duly executed assignment to the Government of the entire rights to such patent application and any Subject Invention claimed therein subject to a reservation as specified in (iii) above; and (vi) to deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government. If, to the best of the Contractor's knowledge and belief, no inventions have been conceived or first actually reduced to practice under this contract, the Contractor shall so certify to the Contracting Officer.

D. The Contractor agrees to and does hereby grant to the Government, to the full extent of the Contractor's right to do so without payment of compensation to others, the right to reproduce, use and disclose for governmental purposes (including the right to give to foreign governments for their use as the national interest of the United States may demand) all or any part of the reports, drawings, blueprints, data and technical information specified to be delivered by the Contractor to the Government under this contract; PROVIDED, HOWEVER, That nothing contained in this paragraph shall be deemed, directly or by implication, to grant any license under any patent now or hereafter issued or to grant any right to reproduce anything else called for by this contract.

E. Until the Contractor has delivered to the Government the disclosures required by paragraph C (i) of this clause and the information as to any subcontractor required by paragraph G of this clause, there shall be withheld from final payment under this contract ten percent (10%) of the contract price, or \$5,000, whichever is smaller; PROVIDED, HOWEVER, That the withholding of the aforesaid amount, or subsequent payment thereof to the Contractor, shall not be construed as a waiver of any rights accruing to the Government under this contract; and PROVIDED FURTHER, That any amount so withheld under this paragraph shall not be in addition to any amounts withheld under other provisions of this contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

F. The Contractor agrees to exert all reasonable effort to negotiate for the inclusion in any subcontract hereunder of \$3,000, or more, in which payment is to be made for experimental, developmental or research work, of this patent rights clause or one approved by the Contracting Officer. In the event of refusal by a subcontractor to accept such patent rights clause,



the Contractor shall obtain the written authorization of the Contracting Officer (which authorization may be granted with respect to a particular subcontract) to proceed with the subcontract, and shall cooperate with the Government in the negotiation with such subcontractor of a mutually acceptable patent rights clause; PROVIDED, HOWEVER, That the Contractor shall in any event require the subcontractor to grant to the Government patent rights under Subject Inventions of no less scope and on no less favorable terms than those which the Contractor has under such subcontracts, except that in no event shall the subcontractor be required to grant to the Government patent rights in excess of those herein agreed to be granted to the Government by the Contractor.

G. The Contractor agrees to notify the Contracting Officer in writing of any subcontract containing a patent rights clause, to furnish to the Contracting Officer a copy of such clause, and promptly to notify the Contracting Officer when such subcontract is completed. It is understood that with respect to such subcontract clause, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the obligations of the subcontractor with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to a patent rights clause in any subcontract.

H. When the Contractor shows that it has been delayed in the performance of this contract by reason of its inability to obtain, under reasonable terms that include a suitable patent rights clause, a qualified subcontractor for any particular part, item or function of this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay; and, upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates, and an increase in contract price based upon additional costs incurred, are proper under the circumstances; and the contract shall be modified accordingly. If the Contractor, after exerting all reasonable effort, is unable to obtain a qualified subcontractor as set forth above, the Contractor may submit to the Contracting Officer a written request for waiver or modification of the requirement that a suitable patent rights clause be included in the subcontract. Such request shall specifically state that the Contractor has used all reasonable efforts to obtain such qualified subcontractor and shall cite the waiver or termination provision hereinafter set forth. If, within thirty-five (35) days after the date of receipt of such request for a waiver or modification of said requirement, the Contracting Officer shall fail to grant such request, the requirement shall be deemed to have been waived by the Government. If within such period the Contractor

shall receive a written denial of such request by the Contracting Officer, this contract shall thereupon automatically terminate and the rights and obligations of the parties shall be governed by the provisions of the clause of this contract entitled "TERMINATION FOR CONVENIENCE OF THE GOVERNMENT" just as if a notice of termination had been delivered to the Contractor specifying that the contract was terminated for the convenience of the Government.

## **27. AUTHORIZATION AND CONSENT**

A. The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools or methods the use of which results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance.

## **28. PATENT INDEMNITY**

A. If the amount of this contract is in excess of \$5,000, the Contractor agrees to indemnify the Government and its officers, agents and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given an opportunity to present recommendations as to the defense thereof; and further such indemnity shall not apply in any one of the following situations: (i) any infringement resulting from the addition to any such supplies of other supplies not furnished by the Contractor for the purpose of

such addition; (ii) any settlement of a claim of infringement made without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction; (iii) any claim of infringement arising from use or disposal outside the scope of any license limitation under which the Contractor is bound, provided that the Contractor has notified the Government of the limitation prior to first delivery under this contract; (iv) any infringement necessarily resulting from changes (other than the substitution of another standard commercial part or component manufactured or supplied by the Contractor) ordered pursuant to this contract, or from specific written instructions given by the Contracting Officer directing a manner of performing the contract not normally utilized by the Contractor.

B. The foregoing indemnity shall apply only to contract items or parts thereof which are standard commercial supplies.

## **29. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT**

A. If the amount of this contract is in excess of \$5,000, the Contractor agrees to report to the Contracting Officer, promptly and in reasonable written detail, each claim of patent infringement based on the performance of this contract and asserted against it, or against any of its subcontractors if it has notice thereof.

B. In the event of litigation against the Government on account of any claim of infringement arising out of the performance of this contract or out of the use of any supplies furnished or construction work performed hereunder, the Contractor agrees that it will furnish to the Government, upon request, all evidence and information in its possession pertaining to the defense of such litigation. Such information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

## **30. FLIGHT RISK**

A. As used in this clause the term "operation" includes tests of aircraft, tests of equipment and accessories installed therein, and the operation of any power plant installed therein, whether or not the aircraft is in motion during the making of any such test or the operation of any such power plant.

180180100 - 31 -

**SECRET**

1110000

FS-99

**B. Each and every operation of any aircraft (1) to be furnished to the Government under this contract, or (2) furnished to the Contractor by the Government for the performance of this contract, whether conducted by the Contractor, by the Government or by any person authorized by the Government, shall be conducted at the risk of the Government insofar as loss or destruction of or damage to such aircraft (including equipment and accessories installed therein) is concerned, notwithstanding the provisions of the clause hereof entitled "GOVERNMENT-FURNISHED PROPERTY": PROVIDED, That if personnel conducting such operation are not either furnished by the Government or approved in writing by the Contracting Officer, or his representative to whom such authority has been delegated, such operation shall be conducted at the risk of the Contractor and the Contractor shall be liable for loss and destruction of and damage to Government property occurring in the course of such operation; and FURTHER PROVIDED That the Contractor shall bear the risk of and, with respect to Government-furnished property, shall be liable for loss and destruction of, and damage to, such aircraft, equipment and accessories occurring in the course of such operation and resulting from willful misconduct or failure to exercise good faith on the part of the Contractor's managerial personnel as defined in the clause hereof entitled "GOVERNMENT-FURNISHED PROPERTY."**

**C. Pursuant to the requirement of B above, the Contracting Officer hereby approves the trainees hereunder, and Contractor's instructors in connection with such training operations, as authorized personnel to conduct operations on the ground only with respect to the operation of Government-owned aircraft under this contract, within the scope of the area of training provided for under this contract.**

**D. Any disputes that may arise under the provisions of this clause shall be determined as provided in the clause hereof entitled "DISPUTES."**

080100100

SECRET

### 31. ALTERATIONS IN CONTRACT

080180100

SECRET

52 99